

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Talisayan	Team: Squad #11	CCRB Case #: 201907713	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 08/08/2019 11:29 PM	Location of Incident: 1428 St. Mark's Avenue	Precinct: 73	18 Mo. SOL 2/8/2021	EO SOL 9/25/2021	
Date/Time CV Reported Sun, 08/18/2019 9:53 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 08/29/2019 11:07 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jason Kwan	10201	961874	PSA 2
2. POM Kevin Padilla	16328	959868	PSA 2
3. POM Godwin Ngai	01239	954175	PSA 2

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Eduardo Santiago	20816	955446	PSA 2

Officer(s)	Allegation	Investigator Recommendation
A.POM Jason Kwan	Abuse: Police Officer Jason Kwan interfered with § 87(2)(b)'s use of a recording device.	
B.POM Jason Kwan	Abuse: Police Officer Jason Kwan refused to provide his shield number to § 87(2)(b).	
C.POM Godwin Ngai	Abuse: Police Officer Godwin Ngai took a photograph of § 87(2)(b)'s work identification.	
§ 87(4-b), § 87(2)(g)		

### Case Summary

On August 18, 2019, § 87(2)(b) called the IAB Command Center to file this complaint, IAB Log 19-31410, which was subsequently received at the CCRB on August 29, 2019 via IAB Referral Log # 19-32046.

On August 8, 2019, at approximately 11:30 p.m., § 87(2)(b) was inside a vehicle parked by a fire hydrant located at 1428 St. Mark's Avenue in Brooklyn. In an unmarked vehicle, PO Jason Kwan, PO Godwin Ngai, PO Kevin Padilla, and PO Eduardo Santiago, all of Police Service Area 2, observed and approached § 87(2)(b)'s vehicle. PO Kwan approached the driver's side and spoke to § 87(2)(b) who had been talking on his phone. PO Kwan knocked on § 87(2)(b)'s window, asked § 87(2)(b) to roll down his window, and requested § 87(2)(b)'s driver's license and vehicle registration. § 87(2)(b) provided his identification to PO Kwan. § 87(2)(b) asked PO Kwan for his shield number. PO Kwan removed his shield from under his vest. § 87(2)(b) took out his MTA-issued phone to photograph PO Kwan's shield, and PO Kwan stated, "You're shining a light in my face. You can't take a picture of it (**Allegation A – Abuse of Authority**, § 87(2)(g)). PO Kwan then took his hand and covered his shield (**Allegation B – Abuse of Authority**, § 87(2)(g)). PO Padilla asked § 87(2)(b) for his MTA employee identification card. PO Padilla gave the MTA identification to PO Ngai, who took a photograph of it using a cell phone (**Allegation C – Abuse of Authority**, § 87(2)(g), § 87(4-b)).

The investigation obtained body-worn camera (BWC) footage from PO Kwan, PO Ngai, PO Padilla, and PO Santiago.

PO Kwan issued § 87(2)(b) a parking summons as a result of this interaction [Board Review 01].

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Jason Kwan interfered with § 87(2)(b)'s use of a recording device.**

**Allegation (B) Abuse of Authority: Police Officer Jason Kwan refused to provide his shield number to § 87(2)(b).**

It is undisputed that § 87(2)(b) was inside a grey Mercedes Benz parked by a fire hydrant on 1428 St. Mark's Avenue when PO Kwan spoke to § 87(2)(b) at the driver's side door.

PO Padilla's BWC footage captures PO Kwan taking § 87(2)(b)'s identification while PO Kwan is operating his phone. § 87(2)(b) asks for PO Kwan's identification. PO Kwan states, "Yes, sir" and pulls from under the right side of his vest a shield, which is attached to a chain. PO Kwan's shield is visible on the right side of his chest [Board Review 02, timestamps 00:02:11 to 00:02:18 in the video player].

PO Padilla's BWC footage further captures § 87(2)(b) taking his phone and directing its camera lens at PO Kwan. The camera produces a flash that persists for approximately two seconds. PO Kwan is still holding his own phone at chest level. PO Kwan states, "You mind not taking a picture of me right now, please sir? You just took a picture of me. You're shining a light in my face. Do you mind not doing that please?" At this time, PO Kwan is holding § 87(2)(b)'s identification with his left hand. PO Kwan is holding a phone with his right hand. Aside from holding these objects, PO Kwan does not make any other movements, and his shield is still visible at his chest area [Board Review 02, timestamps 00:02:19 to 00:02:40 in the video player].

§ 87(2)(b) stated that after providing his identification to PO Kwan, § 87(2)(b) asked for PO Kwan's shield number. PO Kwan removed his shield and held it by his side for § 87(2)(b) to see. When § 87(2)(b) tried to photograph PO Kwan's shield, PO Kwan stated, "You can't take a picture of it." His camera's flash feature was on when he tried to photograph the shield. PO Kwan covered his shield with his left hand until § 87(2)(b) put his phone away [Board Review 03].

PO Kwan testified that he presented his shield to § 87(2)(b) by pulling it from under his vest. PO Kwan had his shield, which was attached to a chain, out during the entirety of his interaction with § 87(2)(b). PO Kwan did not recall whether § 87(2)(b) had anything his hands nor did PO Kwan remember whether § 87(2)(b) asked to take a photograph of PO Kwan's shield. PO Kwan did not remember complaining about § 87(2)(b)'s phone flash. PO Kwan stated that he that he might have covered his shield if he were writing something, and that if he did, it was not intentional [Board Review 04].

PO Padilla testified that he stood near PO Kwan as he was speaking to § 87(2)(b) at the driver's side. While PO Padilla did not hear § 87(2)(b) ask for PO Kwan's shield number, PO Padilla saw PO Kwan pull his shield from under his vest. PO Padilla saw a flash of light come from the driver's side window. PO Kwan did not cover or obscure his shield, and he did not try to shield himself from the flash of light [Board Review 05].

PO Santiago testified that he stood by the passenger's side during the entirety of the incident while his partners moved toward the driver's side. From the passenger's side of § 87(2)(b)'s vehicle, PO Santiago was unable to hear anything coming from within § 87(2)(b)'s vehicle. However, PO Santiago observed a flash coming from § 87(2)(b)'s vehicle; however, he did not know whether the flash came from a camera or a phone. PO Santiago heard PO Kwan say, "Can you not blind me?" PO Santiago did not know whether PO Kwan presented his shield to § 87(2)(b) nor did he recall whether PO Kwan's shield was visible [Board Review 06].

PO Ngai did not recall PO Kwan's interaction with § 87(2)(b) [Board Review 07].

NYPD Patrol Guide Procedure 203-29 prohibits officers from threatening, intimidating or otherwise discouraging an observer from recording a police officer's activities, intentionally blocking or obstructing cameras or other recording devices or deleting pictures or recordings from the observer's recording device or instructing the observer to delete such pictures or recordings [Board Review 08].

NYPD Patrol Guide Procedure 203-09 requires officers to courteously and clearly state their rank, name, shield number and command, or otherwise provide them, to anyone who requests them to do so [Board Review 09].

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation (C) Abuse of Authority: Police Officer Godwin Ngai took a photograph of § 87(2)(b)'s work identification.**

PO Padilla's BWC footage captures PO Padilla, who is by the driver's side with PO Kwan, telling § 87(2)(b) that his MTA-issued phone should be for business purposes when the latter took a photograph of PO Kwan [Board Review 02, 00:02:45 to 00:02:50 in the video player]. PO Padilla asks for § 87(2)(b)'s MTA identification, and § 87(2)(b) asks PO Padilla to explain why he needs it. PO Padilla states, "I saw you with a MTA phone, so I just want to make sure, confirm that you didn't steal it." § 87(2)(b) interrupts PO Padilla, "I probably stole this phone from somewhere,

right?” PO Padilla explains that he just wants to confirm that § 87(2)(b) owns it. § 87(2)(b) provides his MTA identification card to PO Padilla [Board Review 02, 00:03:55 to 00:04:12 in the video player]. PO Padilla turns to PO Ngai, who is standing beside PO Kwan, and asks him to take a photograph of § 87(2)(b)'s MTA identification card. PO Ngai photographing the identification is not captured in body-worn camera footage [Board Review 02, 00:04:39 to 00:04:47 in the video player].

§ 87(2)(b) stated that an officer asked for his identification, and an officer subsequently photographed it. § 87(2)(b) was unsure which officer requested his MTA identification card and which officer photographed it [Board Review 03].

PO Padilla confirmed that he asked for § 87(2)(b)'s MTA identification card to confirm whether § 87(2)(b) owned the MTA-issued cell phone. PO Padilla asked PO Ngai to photograph § 87(2)(b)'s MTA identification, which was photographed with PO Ngai's department-issued phone [Board Reviews 05].

PO Ngai did not recall taking a photograph of § 87(2)(b)'s MTA identification card [Board Review 07].

In a subsequent interview, PO Ngai reviewed PO Padilla's body-worn camera footage [Board Review 10]. PO Ngai stated that he, PO Kwan, and PO Padilla were by the driver's side of § 87(2)(b)'s vehicle. PO Ngai believed that PO Padilla stated, “Do me a favor. Take a picture of it.” PO Ngai did not recall taking a photograph of § 87(2)(b)'s MTA identification card. PO Ngai also reviewed his own body-worn camera footage [Board Review 10]. He reiterated that he did not recall taking a photograph of § 87(2)(b)'s MTA identification.

PO Kwan and PO Santiago provided testimony in which they did not recall or observe an officer requesting § 87(2)(b)'s MTA work identification. PO Kwan did not recall any officer asking for § 87(2)(b)'s MTA identification card nor did PO Kwan remember an officer photographing § 87(2)(b)'s identification. PO Santiago stated that he remained on the passenger's side of the vehicle during the incident, where he did not observe his partners photographing § 87(2)(b)'s MTA work identification [Board Reviews 04 and 06].

On February 13, 2020, Police Service Area 2 responded to a request for photographs from the department-issued cell phones of PO Ngai, PO Padilla, PO Kwan, and PO Santiago indicating negative results of any photographs taken during this incident [Board Review 11].

Under NYPD Operations Order Number 20 “Pilot Program – Use of Department Smartphones and Tablets,” officers are prohibited from using their personal cellular/smartphones/tablets during their tour to conduct official Department business except under exigent circumstances [Board Review 12].

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g), § 87(4-b)

§ 87(2)(b), § 87(2)(g), § 87(4-b)

#### **Civilian and Officer CCRB Histories**

- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]
- PO Kwan has been a member of service for three years. Three complaints, and five allegations, have been filed against him, none of which have been substantiated.
- PO Ngai has been a member of service for seven years. Seven complaints, and twenty allegations have been filed against him, none of which have been substantiated.
- PO Padilla has been a member of service for four years. Four complaints, and fifteen allegations have been filed against him, none of which have been substantiated.

#### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) [REDACTED] declined mediation.
- As of February 13, 2020, the Office of the New York City Comptroller has no record of a Notice of Claim being filed in regard to this complaint [Board Review 15].
- § 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature                      Print Title & Name                      Date

Squad Leader: \_\_\_\_\_  
Signature                      Print Title & Name                      Date

Reviewer: \_\_\_\_\_  
Signature                      Print Title & Name                      Date